

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

January 28, 2016

The Regular Meeting of the Board of Adjustment was called to order at 7:30 PM in the Public Meeting Room.

It was confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted in Town Hall, Board Office, and supplied to the Township Clerk at least forty-eight hours prior to the meeting. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

Oath of Public Officers – Newly Appointed Members

Robert Miller -- 4-year term to end 12/31/2019

The oath of office was administered to Mr. Miller by Mr. Bernstein prior to the meeting.

Roll Call:

Members present were Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Nappi, Mr. Delia, Mr. Sylvester and Mr. Mustacchi. Mr. Siburn was absent. Mr. Daniel Bernstein, Board Attorney, was also present.

Mr. Miller was nominated to serve as Board Vice Chairman on the motion of Mr. Smith, seconded by Mr. Mustacchi. There were no other nominations and Mr. Miller was elected Board Vice Chairman by unanimous voice vote 8-0.

Adoption of Minutes

January 14, 2016 Reorganization and Conference Meeting

January 14, 2016 Executive Session

A motion was made by Mr. Sullivan, seconded by Mr. Smith, and carried by unanimous voice vote to adopt the minutes of the January 14, 2016 Reorganization and Conference Meeting and the January 14, 2016 Executive Session as presented.

Applications for Review:

**App.#26-15: New York SMSA Limited Partnership d/b/a Verizon Wireless,
200 Connell Drive, Block 4301, Lot 1.011 (OR-B Zone)**

Applicant is seeking to construct a wireless communications facility on the roof of the office building located at 200 Connell Drive. The facility will consist of twelve panel antennas arranged in three arrays of four antennas each. Two of the arrays will be placed behind stealth screening, and the third array will be mounted to an existing penthouse and painted to match the color of the penthouse façade. A use variance is requested, as wireless communications facilities are not permitted in the OR-B Zone. In addition, a height variance is requested to permit the antenna and equipment screening to extend to seventy feet, which is the same height as the existing rooftop penthouse. (The OR-B Zone has a height limitation of fifty-five feet, and the roof of the building is already at a height of fifty-nine feet.)

Michael Breen, attorney for applicant, stated that the application is a proposal to install a wireless telecommunications facility on the roof of the building located at 200 Connell Drive. The facility will consist of twelve panel antennas arranged in three arrays of four antennas each. Two of the arrays will be placed behind stealth screening, and the third array will be mounted to an existing penthouse and painted to match the color of the penthouse façade. Equipment cabinets will also be included. Mr. Breen stated that a use variance is required as well as a variance for height and a waiver of site plan approval. The applicant has previously received approval from the Union County Planning Board.

Mr. Bernstein noted that there will not be any ground facilities, only facilities on the roof, so the applicant's argument is that there is no need for site plan approval since there will be no ground disturbance.

Gary Lucas, engineer, was sworn, gave his educational and professional background and was accepted as an expert witness. Mr. Lucas provided an overview of the location of the facility. He stated that the proposed facility consists of 12 antennas on the roof top and he described the location of the antennas on the roof and on the penthouse and the location of the equipment cabinets. Mr. Lucas also described the screening that is proposed, stated that the facility will not exceed the existing height of 70' and indicated the location of the generator. He stated that a structural analysis of the roof was performed and it was found to be adequate to hold the proposed installation. He also stated that the equipment is built to stand up to weather.

In response to questions from the Board, Mr. Lucas stated that most existing cell towers are owned by a few large companies and the majority of sites they are now working on are rooftops facilities. There will be no noise or vibrations created by this facility and the generator will only run whenever there is a power outage. The generator will run for 30 minutes in the morning every other week for maintenance. The facility will be an unmanned facility, there will be no environmental impact, and everything is in accordance with governmental regulations.

Open to Public

The hearing was opened to the public for questions regarding Mr. Lucas' testimony. There were no members of the public who had comments or questions.

Sean Haynberg, radio frequency engineer, was sworn, gave his educational and professional background and was accepted as an expert witness. Mr. Haynberg discussed the need for this location and how it fulfills Verizon's mandate under FCC regulations. The purpose of the proposed site is to offload capacity from two sites in the area that are at their capacity limits.

Mr. Haynberg presented Exhibit A-1 – illustration showing the proposed site, the existing Verizon cell sites in the area, surrounding sites and their locations. The current service is slower and less than reliable service because of the overloading of the existing sites.

Mr. Haynberg presented Exhibit A-2 – illustration showing the coverage with the proposed site and the areas that will be served by the new site.

In response to a question from the Board, Mr. Haynberg stated that rooftop sites have become more prevalent since there are no towers available. This new site should address the needs in this area for many years. There were no other sites in this area that would fulfill the need. This is the standard amount of equipment for this type of site and construction will take about six weeks.

Mr. Haynberg stated that the proposal is in compliance with FCC regulations for radio frequency emissions and complies with all FCC rules and regulations. The site will be a managed area, maintenance people will require training and there is a radio frequency sign that will be posted. It will be a managed and locked facility with procedures that have to be followed. There will be one 70 watt light that will be on a 30 minute timer and the equipment will be checked every four weeks.

Open to Public

The hearing was opened to the public for questions regarding Mr. Haynberg's testimony. There were no members of the public who had comments or questions.

Dave Karlebach, planner, was sworn, gave his educational and professional background and was accepted as an expert witness.

Mr. Karlebach stated that the proposed facility will be on the roof of a large building within the corporate park that is on 185 acres that is in an isolated location. The nearest residential houses are 1100' away. The building is a commercial building within the commercial zone. The general welfare will be served by this facility and the public interest will be advanced. Wireless communications play a vital role in preserving the health and safety of New Jersey citizens. The proposal will require minimal site modification and will use existing access and parking. There will be no increase in impervious coverage, no tree removal and onsite utilities will be used. The site is adjacent to an interstate highway and will serve the traveling public.

Mr. Karlebach further stated that a height variance is required for 70' height where 55' is permitted. The height at this location is necessary to achieve radio frequency objectives. There is no proposed increase in the height of the building and there will be no change in the visual quality of the site. There will be no detriment to the public, no impact on residents and the facility will not generate any noise, glare or fumes. The facility will require limited municipal services and there will be no traffic impact. There will be no substantial detriment to the public good and the benefits of the proposal outweigh the detriments. The proposal does not conflict with the recommendations in the Master Plan and there are sufficient reasons for granting the use variance and the height variance.

Open to Public

The hearing was opened to the public for questions regarding Mr. Karlebach's testimony. There were no members of the public who had comments or questions.

Open to Public

The hearing was opened to the public for questions or comments with regard to the application. There were no members of the public who had comments or questions.

Mr. Breen stated that he believes the experts have done a good job of presenting the application and their testimony demonstrates the need for the facility.

A motion was made by Mr. Boyer, seconded by Mr. Nappi, with respect to App#26-15: New York SMSA Limited Partnership d/b/a Verizon Wireless, 200 Connell Drive, Block 4301, Lot 1.011 (OR-B Zone) to approve the application with variances and site plan waiver, subject to the conditions discussed and further subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was 7-0 with Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Nappi, Mr. Delia and Mr. Mustacchi voting in favor and none opposed.

App.#1-16: Ronnie & Emilie Nieves, 25 Liberty Ave., Block 2004, Lot 2 (R-15 Zone)

The application #32-14 for additions to the house was approved by the Board of Adjustment on May 28, 2015, and memorialized by Resolution on July 23, 2015. A new application is being submitted due to a change in plans which calls for demolishing the existing house and constructing a new home on the lot. Variances are needed for a) insufficient front yard setbacks on both Wardle and Liberty Avenues (corner lot); b) rear yard setback; c) building coverage and d) total lot coverage. Nonconforming issues include lot area and lot depth.

Ronnie and Emilie Nieves were sworn. Mr. Nieves stated that the previous application was for an addition and alteration and demolition of the garage. The design now being presented is the same as previously approved. Originally they decided to add a new level onto a sound foundation. When the builders further assessed the project they noticed that the foundation is not able to support the structure. So now they want to build a new foundation based on the original design. The setbacks are the same and there are no changes to the layout. This is just being classified as new construction rather than renovation.

Discussion took place with regard to the dumpster on the property and whether or not a permit was obtained for that.

Mr. Nieves further stated that the existing front yard setback is 17' and they are now proposing 19' including a covered porch. The existing side yard setback is 19' and 29' is now proposed. The existing rear yard setback is 51' and 34' is now proposed so a variance is needed from the 40' required. The existing impervious coverage is 29% and proposed is 27%. The existing detached garage will be removed and the new three car garage will be attached to the house. The asphalt in the back yard will be removed and there will be no shed. The layout of the house will be as follows: the basement will be unfinished and used for utilities and a playroom; the first floor will have a living room, family room, kitchen and dining room, and a mud room in the back; the second floor will have five bedrooms and three baths; and the attic will be for storage and HVAC.

In response to questions from the Board, Mr. Nieves stated that the access to the house from the garage will be through the mud room, they are not taking down any trees, the air conditioning unit will be located outside behind the garage, the covered porch will be 31' x 6' and it will be open on all sides and there will be a pull down ladder to the attic. The setback of the adjoining house is similar to what is proposed and the two-story homes across the street on Liberty Avenue are in a straight line. The height of the proposed house is 29' and the three car garage will have two doors.

Open to Public

The hearing was opened to the public for comments or questions regarding the application. There were no members of the public who had comments or questions.

William Kascel, 52 Liberty Avenue, was sworn and stated that his concern is about how narrow the street is and whether or not the proposed house will be closer to the street. He noted that the house is actually being set back further and that is good. He asked about the dumpster that has been in the front yard for months.

Ava Kascel, 52 Liberty Avenue, was sworn and asked what the timeline for construction is.

Mr. Nieves stated that the financing is done and they want to start on the construction as soon as possible.

A motion was made by Mr. Boyer, seconded by Mr. Nappi, with respect to App#1-16: Ronnie & Emilie Nieves, 25 Liberty Ave., Block 2004, Lot 2 (R-15

Zone) to approve the application with variances, subject to the conditions discussed and further subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was 7-0 with Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Nappi, Mr. Delia and Mr. Mustacchi voting in favor and none opposed.

Adjournment:

A motion was made by Mr. Smith, seconded by Mr. Nappi, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 9:00 PM.

Regina Giardina, Secretary Pro Tem